

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
MILWAUKEE DIVISION**

WILFREDO RIVERA,
2968 South 15th Place
Milwaukee, WI 53215

Plaintiff,

v.

Case No. _____

JURY TRIAL DEMANDED

MILWAUKEE COUNTY
(AIRPORT DIVISION)
901 North 9th Street
Room 303, Courthouse
Milwaukee, WI 53233

Defendant.

COMPLAINT

NOW COMES, Wilfredo Rivera (hereinafter "Plaintiff" or "Rivera"), by his attorneys, The Previant Law Firm s.c. and Nathan D. Eisenberg and Sara J. Geenen as and for a cause of action against Defendant Milwaukee County (hereinafter "Defendant" or "County") states as follows.

INTRODUCTION

1. This is a civil action seeking equitable relief and compensatory and punitive damages pursuant to Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et. seq., brought by plaintiff to obtain redress from defendant's discriminatory practices with respect to the failure to promote plaintiff and other terms and conditions of employment.

JURISDICTION AND VENUE

2. Jurisdiction is founded upon 42 U.S.C. §§ 2000e-5, and 28 U.S.C. §§ 1331, 1337 and 1343.

3. Plaintiff has complied with all jurisdiction prerequisites to action under Title VII of the Civil Rights Act of 1964 by timely filing a charge of discrimination with the Equal Employment Opportunity Commission on October 28, 2011, receiving determination of reasonable cause on December 10, 2012, and receiving "Notice of a Right to Sue" by letter dated August 7, 2013. A copy of the charge is attached hereto as Exhibit A, a copy of the determination is attached hereto as Exhibit B, and a copy of the right to sue letter is attached hereto as Exhibits C.

4. Venue in this judicial district is proper by virtue of 28 U.S.C. § 1391(e) in that many of the alleged acts were committed in the Eastern District of Wisconsin. Plaintiff worked for defendant in the Eastern District of Wisconsin. Additionally, the Defendant is located within and conducts business within this judicial district.

PARTIES

5. Plaintiff Wilfredo Rivera is an adult male residing at 2968 South 15th Place in Milwaukee, Wisconsin. Rivera is Hispanic and born in Puerto Rico.

6. Defendant Milwaukee County is a political subdivision of the State of Wisconsin, the county seat of which is the City of Milwaukee, Wisconsin. The County maintains offices and operations throughout the entire county, including an airport division operating General Mitchell International Airport

COUNT I – DISCRIMINATION BASED ON RACE/NATIONAL ORIGIN

7. Plaintiff realleges and incorporates by reference paragraphs 1 through 6 as if they were set forth herein.

8. Rivera began employment with Milwaukee County as a Network Technical Specialist Level II (“Tech II”) on approximately October 1, 2001, at General Mitchell International Airport (“Airport”), a position in which he remains as of the date of this Complaint.

9. During his employment, Rivera’s supervisor, Tom Heller, provided performance reviews that stated that Rivera met or exceeded all of the County’s work-related expectations.

10. Notwithstanding Rivera’s good job performance reviews, Heller criticized Rivera’s written English skills.

11. In 2011, the County added another Network Technical Specialist position at the Airport and posted a job vacancy announcement for a Network Technical Specialist IV (“Tech IV”). The Tech IV position has a higher rate of pay than the Tech II position.

12. Rivera was objectively qualified for the Tech IV position, since he possessed all of the required education and practical experience required by the position.

13. Rivera applied for the Tech IV position and was interviewed for that position on July 8, 2011. The interview was conducted by Rivera’s supervisor, Tom Heller, and two outside information technology contractors. All three interviewers are white males.

14. The County ultimately hired another applicant, George Knups, a white male, to fill the Tech IV position.

15. Rivera had as much or more experience than Knups and met or exceeded all of the qualifications for the position.

16. After Milwaukee County's failure to promote Rivera to the Tech IV position and continuing to date, Rivera continues to perform all of the Tech IV job duties, alongside Knups and the other Tech in the department.

17. After Milwaukee County's failure to promote Rivera to the Tech IV position and continuing to date, Rivera continues to perform the same duties as Knups but at a lower rate of pay and at a lower classification.

19 Milwaukee County's failure to promote Rivera constituted a materially adverse employment action.

20. Milwaukee County's failure to promote Rivera constituted discrimination on the basis of race and national origin where, inter alia, such failure was based on statements of Rivera's supervisor concerning his race/national origin, the result of an improperly constituted interview panel, and resulted in the hiring of a less-qualified white applicant.

21. The County continues to discriminate against Rivera based on race/national origin by paying a white employee, Knups, at a higher rate of pay than Rivera for the same work duties.

22. The defendant's conduct violated Title VII of the Civil Rights Act of 1964 as amended, 42 U.S.C., § 2000e-2(a).

WHEREFORE the plaintiff, Wilfredo Rivera, respectfully requests that this Court:

- a. Enter a judgment that the defendant violated Title VII of the Civil Rights Act of 1964 as amended;
- b. Enter judgment against the defendant and in favor of Rivera for prospective and retrospective monetary relief;
- c. Enter judgment against the defendant and in favor of Rivera for compensatory and punitive damages;

- d. Award Rivera the cost of this action and reasonable attorneys' fees;
- e. Grant Rivera such other and further relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial on all issues of fact.

Dated this 11th day of October, 2013.

/s/ Nathan D. Eisenberg

Nathan D. Eisenberg (State Bar No. 1030555)
nde@previant.com

Sara J. Geenen (State Bar No. 1052748)

sjg@previant.com

THE PREVIAN LAW FIRM, S.C.

1555 North RiverCenter Drive, Suite 202

Milwaukee, WI 53212

(414) 271-4500

(414) 271-6308 (fax)

ATTORNEYS FOR PLAINTIFF

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To: Agency(ies) Charge No(s):

☐ FEPA☒ EEOC

443-2011-01728

Wisconsin Equal Rights Division

and EEOC

State or local Agency, if any

Name (Indicate Mr., Ms., Mrs.)

Mr. Wilfredo Rivera

Home Phone (Incl. Area Code)

(414) 628-0613

Date of Birth

11-04-1968

Street Address

City, State and ZIP Code

2968 S 15th Place, Milwaukee, WI 53215

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

MILWAUKEE COUNTY (AIRPORT DIVISION)

No. Employees, Members

Unknown

Phone No. (Include Area Code)

(414) 747-5300

Street Address

City, State and ZIP Code

901 North 9th Street, Courthouse, Room 210, Milwaukee WI 53233

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☐

RACE

☐

COLOR

☐

SEX

☐

RELIGION

☒

NATIONAL ORIGIN

☐

RETALIATION

☐

AGE

☐

DISABILITY

☐

GENETIC INFORMATION

☐ OTHER (Specify)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

07-08-2011

08-04-2011

☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

- I. I began working for the above named Respondent on October 1, 2001. I physically work in the Respondent's Airport Division. My current position is Network Technical Specialist II. My supervisor is Thomas Heller. On July 8, 2011, I interviewed for a promotion to the position of Network Technical Specialist IV position. On August 4, 2011, I was advised that Respondent had filled the position for which I applied. My understanding is that the selected candidate has no networking experience.
- II. I believe that the Respondent has discriminated against me on the basis of my National Origin (Hispanic-Puerto Rican), in violation of Title VII of the Civil Rights Act of 1964, as amended.

RECEIVED EEOC
NOV 03 2011
MILWAUKEE AREA OFFICE

RECEIVED EEOC
NOV 04 2011
MILWAUKEE AREA OFFICE

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

I declare under penalty of perjury that the above is true and correct.

NOTARY - When necessary for State and Local Agency Requirements

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT



SUBSCRIBED AND SWORN TO BEFORE ME THIS 28th day of NOV 2011



My Commission expires 02-12-12

Date

Charging Party Signature

EXHIBIT

A



U.S. Equal Employment Opportunity Commission
Milwaukee Area Office

310 West Wisconsin Ave
Suite 800
Milwaukee, WI 53203
(414) 297-1112
TTY (414) 297-1115
Fax: (414) 297-4133

Respondent: MILWAUKEE COUNTY (AIRPORT DIVISION)
EEOC Inquiry No.: 443-2011-01728

OCT 26 2011

Wilfredo Rivera
2968 S 15th Place
Milwaukee, WI 53215

Dear Mr. Rivera:

This is with reference to your recent inquiry (an office visit, phone call, correspondence, or electronically submitted intake questionnaire) in which you alleged employment discrimination by the above-named respondent. The information provided indicates that the matter complained of is subject to the statute(s) checked off below:

- ☒ Title VII of the Civil Rights Act of 1964 (Title VII)
- ☐ The Age Discrimination in Employment Act (ADEA)
- ☐ The Americans with Disabilities Act (ADA)
- ☐ The Equal Pay Act (EPA)
- ☐ The Genetic Information Nondiscrimination Act (GINA)

The attached EEOC Form 5, Charge of Discrimination, is a summary of your claims based on the information you provided. To enable proper handling of this action by the Commission you should:

- (1) Review the enclosed charge form and make corrections.
- (2) Sign and date the charge in the bottom left hand block where I have made an "X".
- (3) Return the signed charge to this office.

These steps are necessary if you wish to file a charge. No charge has been filed because the correspondence you submitted was not signed. Since charges should be filed within the time limits imposed by law, please complete these steps as soon as possible. Please call me at the number listed below if you have any questions. If you have to call long distance, please call collect.

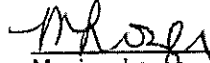
IF WE DO NOT RECEIVE YOUR SIGNED CHARGE WITHIN 30 DAYS OR HEAR FROM YOU WITHIN 30 DAYS, WE WILL ASSUME THAT YOU DECIDED NOT TO FILE A CHARGE OF DISCRIMINATION WITH EEOC.

- ☒ Please be aware that after we receive your signed charge, the EEOC will send a copy of the charge to the agency listed below as required by our procedures. If that agency processes the charge, it may require the charge to be signed before a notary public or an agency official. The agency will then investigate and resolve the charge under their statute.

Wisconsin Equal Rights Division
201 E Washington Ave
Rm A300
Madison, WI 53703

Please use the "EEOC Inquiry No." listed at the top of this letter whenever you call us. Please notify this office of any change in address or of any prolonged absence from home. Please also read the enclosed brochure, "What You Should Know Before You File A Charge With EEOC," for answers to frequently asked questions about employee rights and the EEOC process.

Sincerely,


Monica Lozer
Investigator
(414) 297-4059

Office Hours: Monday – Friday, 7:00 a.m. – 3:30 p.m.
www.eeoc.gov

Enclosure(s)

Copy of EEOC Form 5, Charge of Discrimination

Copy of EEOC Uniform Brochure, "What You Should Know Before You File A Charge With EEOC."



U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
Milwaukee Area Office

310 West Wisconsin Avenue, Suite 800
Milwaukee, WI 53203-2292
(414) 297-1111
TTY (414) 297-1115
FAX (414) 297-4133 & 3146

Charge Number: 443-2011-01728C
FEPA Number: 201104064

Wilfredo Rivera
2968 South 15th Place
Milwaukee, WI 53215

Charging Party

vs.

Milwaukee County (Airport Division)
Attn: Roy L. Williams
Office of Corporation Counsel
901 North 9th Street
Room 303, Courthouse
Milwaukee, WI 53233

Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended (Title VII).

The Respondent is an employer within the meaning of Title VII and the requirements for coverage have been met.

Charging Party alleged that he was discriminated against in violation of Title VII on the basis of his national origin (Hispanic/Puerto Rican) when he was denied a promotion.

I have considered all the evidence disclosed during the investigation and find that there is reasonable cause to believe that there is a violation of Title VII, in that Charging Party was discriminated against on the basis of his national origin (Hispanic/Puerto Rican) when he was denied a promotion.

This determination is final. When the Commission finds that violations have occurred, it attempts to eliminate the alleged unlawful practices by informal methods of conciliation. Therefore, I invite the parties to join with the Commission in reaching a just resolution of this matter. Disclosure of information obtained by the Commission during the conciliation process will be made only in accordance with the Commission's Procedural Regulations (29 CFR Part 1601.26).



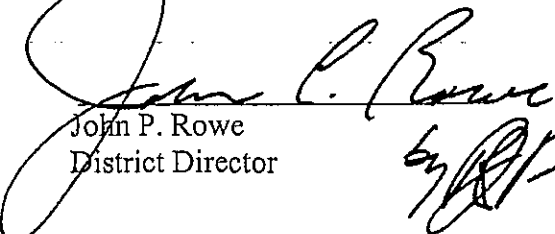
If the Respondent wishes to accept this invitation to participate in conciliation efforts, it may do so at this time by proposing terms for a conciliation agreement. That agreement should be provided to the Commission representative within (14) days of the date of this determination. The remedies for violations of the statutes we enforce are designed to make the identified victims whole, and to provide corrective and preventative relief. These remedies may include, as appropriate, an agreement by the Respondent not to engage in unlawful employment practices, placement of identified victims in positions they would have held but for discriminatory actions, back pay, restoration of lost benefits, injunctive relief, compensatory and/or punitive damages, and notice to employees of the violation(s) and the resolution of the claim.

Should the Respondent have further questions regarding the conciliation process or the conciliation terms it would like to propose, we encourage it to contact the assigned Commission representative. Should there be no response from the Respondent within (14) days, we may conclude that further conciliation efforts in this matter would be futile or non-productive.

DEC 10 2012

Date

On behalf of the Commission:


John P. Rowe
District Director



U.S. Department of Justice

Civil Rights Division

JS:KDW: KLF
DJ 170-85-0

Employment Litigation Section - PHB
950 Pennsylvania Avenue, NW
Washington, DC 20530
www.usdoj.gov/crt/emp

AUG 07 2013

NOTICE OF RIGHT TO SUE WITHIN 90 DAYS

CERTIFIED MAIL 7010 0290 0000 2012 4714
RETURN RECEIPT REQUESTED

Mr. Wilfredo Rivera
c/o Nathan D. Eisenberg, Esquire
The Previant Law Firm
1555 N. Rivercenter Dr., Ste. 202
Milwaukee, WI 53212

Re: Wilfredo Rivera v. Milwaukee County (Airport Div.)
EEOC Charge No. 443-2011-01728

Dear Mr. Rivera:

Because you filed the above charge with the Equal Employment Opportunity Commission, and conciliation on that charge has failed, and because you through your attorney have specifically requested this Notice, you are hereby notified that you have the right to institute a civil action under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Section 2000e et seq., against the above-named respondent. This notice should not be taken to mean that the Department of Justice has made a judgment as to whether or not your charge is meritorious.

If you choose to commence a civil action, such suit must be filed in the appropriate court within 90 days of your receipt of this Notice.

We are returning the files in this matter to EEOC's Milwaukee Area Office. If you or your attorney have any questions concerning this matter or wish to inspect the investigative file, please feel free to address your inquiry to: Rosemary Fox, Acting District Director, Milwaukee Area Office, EEOC, 310 W. Wisconsin Ave., Ste. 800, Milwaukee, WI 53203-2292.

Sincerely,

Jocelyn Samuels
Acting Assistant Attorney General,
Civil Rights Division

By:

Karen D. Woodard
Deputy Chief
Employment Litigation Section

cc: Milwaukee County (Airport Div.) c/o Roy Williams, Esq.
EEOC, Milwaukee Area Office

EXHIBIT

C